

REMARKS

This Amendment is responsive to the Office Action dated February 23, 2010. In this Amendment, Applicant has amended claims 47, 66, 78, and 79, and added claims 82-84. Upon entry of this Amendment, claims 47, 56-57, 66, 68 and 70-84 will be pending.

Claim Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 47, 56, 57, 66, 68 and 70-81 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Applicant submits that the Examiner's rejection of claims 47, 56, 57, 66, 68 and 70-81 under 35 U.S.C. 112, first paragraph are moot in view the claims amendments presented herein. Withdrawal of the rejection is requested.

In the Office Action, the Examiner rejected claims 47, 56, 57, 66, 68 and 70-81 under 35 U.S.C. 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant submits that the Examiner's rejection of claims 47, 56, 57, 66, 68, 71-79, and 81 under 35 U.S.C. 112, second paragraph are moot in view the claims amendments presented herein. Withdrawal of the rejection is requested.

With regard to claims 70 and 80, in the Office Action the Examiner asserted that "the phrase 'approximately 80 Shore D' renders the claims indefinite because there is nothing in the specification, prosecution history, or the prior art to provide any indication as to what range is covered by the term 'approximately'."

Applicant respectfully traverses the rejection of claims 70 and 80 under 35 U.S.C. 112, second paragraph. Applicant submits that, per MPEP § 2173.02, claims 70 and 80 would apprise one of ordinary skill in the art of their scope and, therefore, serve the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent.¹

It is well established that the claim terms such as "approximately" or "substantially" do not render claims indefinite. On a number of occasions, the Court of Appeals for the Federal Circuit has specifically addressed the issue of the term "substantially" in relation to 35 U.S.C. 112. For example, this issue was addressed in *Verve v. Crane Cams Inc.*, (CAFC Nov. 14,

¹ MPEP § 2173.02.

2002). The court in *Verve v. Crane Cams, Inc* cited numerous examples of cases holding that the term "substantially" is not an indefinite claim term. In particular, the court in *Verve v. Crane Cams, Inc.* stated:

Expressions such as "substantially" are used in patent documents when warranted by the nature of the invention, in order to accommodate the minor variations that may be appropriate to secure the invention. Such usage may well satisfy the charge to "particularly point out and distinctly claim" the invention, 35 U.S.C. §112, and indeed may be necessary in order to provide the inventor with the benefit of his invention. In *Andrew Corp. v. Gabriel Elecs. Inc.*, 847 F.2d 819, 821-22, 6 USPQ2d 2010, 2013 (Fed. Cir. 1988) the court explained that usages such as "substantially equal" and "closely approximate" may serve to describe the invention with precision appropriate to the technology and without intruding on the prior art. The court again explained in *Ecolab Inc. v. Envirochem, Inc.*, 264 F.3d 1358, 1367, 60 USPQ2d 1173, 1179 (Fed. Cir. 2001) that "like the term 'about,' the term 'substantially' is a descriptive term commonly used in patent claims to 'avoid a strict numerical boundary to the specified parameter,'" quoting *Pall Corp. v. Micron Separations, Inc.*, 66 F.3d 1211, 1217, 36 USPQ2d 1225, 1229 (Fed. Cir. 1995).

Moreover, the court in *Verve v. Crane Cams, Inc.* continued by stating:

It is well established that when the term "substantially" serves reasonably to describe the subject matter so that its scope would be understood by persons in the field of the invention, and to distinguish the claimed subject matter from the prior art, it is not indefinite.

Similar to the use of the term "substantially," the term "approximately" is used in claims 70 and 80 as a descriptive term to avoid a strict numerical boundary to the parameter of guard plate hardness. In particular, the term "approximately" is used to clarify that the hardness of the guard plates is not limited to exactly 80 Shore D. Notwithstanding, the term "approximately" in claims 70 and 80 describes the subject matter so that its scope would be understood by persons in the field of the invention, and use of the term "approximately" is necessary to provide the Applicant with the benefit of his invention. As such, Applicant requests withdrawal of the rejection of claims 70 and 80 under 35 U.S.C. § 112, second paragraph.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 47, 56-57, 66, 68, 70-74 and 76-80 under 35 U.S.C. 103(a) as being unpatentable over Post (US 6,044,493) in view of Christie (WO/1998/30625).

In the Office Action, the Examiner also rejected claims 75 and 81 under 35 U.S.C. 103(a) as being unpatentable over Post (US 6,044,493) in view of Christie (WO/98/30625) as applied to claims 47, 56-57, 66, 68, 70-74 and 76-80 and further in view of Cordova (US 5,442,815).

In the Office Action, the Examiner rejected claims 47, 56, 66, 68, 71 and 76-79 under 35 U.S.C. 103(a) as being unpatentable over Post (US 6,044,493) in view of Harrison (US 5,914,082).

In the Office Action, the Examiner rejected claims 57, 70, 72-74 and 80 under 35 U.S.C. 103(a) as being unpatentable over Post (US 6,044,493) in view of Harrison (US 5,914,082) as applied to claims 47, 56, 66, 68, 71 and 76-79 and further in view of Christie (WO/98/30625).

In the Office Action, the Examiner rejected claims 75 and 81 under 35 U.S.C. 103(a) as being unpatentable over Post (US 6,044,493) in view of Harrison (US 5,914,082) as applied to claims 47, 56, 66, 68, 71 and 76-79 and further in view of Cordova (US 5,442,815).

Applicant respectfully traverses the above rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the Applicant's claims, and there would have been no rational reason for modification to arrive at the claims.

Independent Claim 47

For example, Post fails to disclose the feature of a plurality of non-overlapping guard plates separated by gaps on a surface of the woven fabric substrate and comprising cured polymer resin, per amended independent claim 47.

In the Office Action, the Examiner alleged that "Post discloses a glove comprising a woven substrate and an array of non-overlapping guard plates that partially penetrate into the substrate (see entire document including the Figures, column 1, lines 5-12, column 4, lines 52-67, column 5, lines 10-36, and column 6, lines 27-45)."²

However, contrary to the Examiner characterization of Post, the palm coating 30 on the palm surface of the glove body 20 fails to describe the feature of a plurality of guard plates comprising cured polymer resin separated by gaps on a surface of the woven fabric substrate. Rather, the palm coating 30 described by Post appears to be a single, continuous layer of an elastomer provided on the palm of glove body 20. Indeed, while Post describes forming the

² Office Action, page 4.

palm coating 30 using a screen printing technique with a 20 to 40 mesh printing screen, after the plastisol is forced through the screen, the uncured resin flows together to form a single continuous layer that is “uniformly spread” on the palm surface of the glove prior to being cured.³ The continuous nature of the palm coating described by Post is illustrated in FIG. 4, which is a cross-sectional view along line 4-4 of the glove shown in FIG. 1. As shown, the palm coating 30 forms a single, continuous layer of elastomeric material on the palm side surface 29 of glove 18.

Accordingly, even assuming *arguendo* that the palm coating 30 may be characterized as a cured polymer guard plate, the palm coating 30 would seem to constitute a single guard plate rather than a plurality of a guard plates. Nowhere does Post describe the palm coating 30 as including multiple portions separated by gaps on the palm body, much less a plurality of non-overlapping guard plates separated by gaps on a surface of the woven fabric substrate.

Moreover, based on the description of Post regarding the function of the palm coating, there would have been no rational reason to modify the example glove of Post to include a plurality of guard plates separated by gaps on the surface of the substrate in place of the palm coating 30. For example, Post describes that the palm coating 30 serves to provide additional protection from cuts, punctures, and abrasions.⁴ In one aspect, Post indicates that the palm coating 30 increases the thickness of the palm surface of the glove and protects the underlying substrate material.⁵ In another aspect, Post also indicates that the palm coating provides a smooth surface along which sharp edges, such as knife edges and needle tips, may glide.⁶

In each instance, the modification of Post to include the plurality of guard plates separated by gaps on the surface of the substrate in place of the continuous palm coating 30 would be contrary to feature attributed to the palm coating 30 by Post. Indeed, the modification of the glove described by Post to substitute a plurality of guard plates separated by gaps on the surface of the substrate for the continuous elastomeric coating described by Post would result in a configuration in which the palm coating 30 does not increase the thickness of the palm surface of the glove and protect the underlying substrate material. Instead, while the thickness of the palm surface may be increased in the portions covered by each guard plate, the thickness of the

³ Post, col. 6, lines, 28-46.

⁴ Post, col. 2, lines 37-42.

⁵ Post, col. 5, lines 44-46.

⁶ Post, col. 5, lines 50, 51.

palm surface at the gaps between the guard plates would be no greater than that of the underlying substrate material. Additionally, while the portions of underlying substrate covered by the guard plates may be protected as directed by Post, the portions of the underlying substrate not covered by the guard plates (e.g., those portions corresponding to the gaps between the guards plates) would not be protected by the palm coating 30. Similarly, the modification of the glove described by Post to substitute a plurality of guard plates separated by gaps on the surface of the substrate for the continuous elastomeric coating 30 described by Post would result in a configuration in which the palm coating 30 does not provide a smooth surface. Instead, the discontinuous nature of the plurality of guard plates separated by gaps would appear to provide for a rough, broken surface over the palm of the glove rather than a smooth surface, especially when compared to that of the continuous elastomeric coating described by Post.

For at least these reasons, Post fails to teach or suggest the features of amended independent claim 47. Moreover, Christie, Harrison, and Cordova fail to overcome this deficiency of Post. In light of such deficiencies, Applicant reserves further comment concerning the Christie, Harrison, and Cordova, but neither admits nor acquiesces in the propriety of the Examiner's characterization of applied references or interpretation of the claims for purposes of the rejections under section 103.

Independent Claim 79

Post fails to teach or suggest the feature of an array of non-overlapping guard plates arranged in a pattern, the guard plates being separated by gaps and comprising cured epoxy resin, as recited by amended claim 79.

Indeed, as described above, the palm coating 30 described by Post appears to be a single, continuous layer of an elastomer provided on the palm of glove body 20. Nowhere does Post describe such a layer as an array of non-overlapping guard plates arranged in a pattern, much less as array non-overlapping guard plates separated by gaps and comprising cured epoxy resin. Similarly, there would have been no rational reason to modify the example glove described by Post to arrive at the features of claim 79 for the reasons identified above.

For at least these reasons, Post fails to teach or suggest the features of amended independent claim 79. Moreover, both Christie and Harrison fail to overcome this deficiency of Post. In light of such deficiencies, Applicant reserves further comment concerning the Christie

and Harrison, but neither admits nor acquiesces in the propriety of the Examiner's characterization of Christie and Harrison or interpretation of the claims for purposes of the rejections under section 103.

Dependent Claims

Claims 56-57, 66, 68 and 70-78, 80, and 81, depend either directly or indirectly from independent claim 47 or 79. Accordingly, each of the dependent claims includes all of the limitations recited by the corresponding independent claim. For at least the deficiencies previously identified with respect to claims 47 and 79, Post fails to disclose all features of the claims 47 and 79. Furthermore, the additional applied references fails to provide any teaching sufficient to overcome the identified deficiencies. In light of such deficiencies, Applicant reserves further comment concerning Christie, Harrison, and Cordova, but neither admits nor acquiesces in the propriety of the Examiner's characterization of the applied references or interpretation of the claims for purposes of the rejections under section 103.

Moreover, with regard to claims 47 and 56, the Examiner took official notice that silicone is a heat resistant material.⁷ Applicant notes that the Office Action failed to provide any evidence that supports the assertion that silicone is a heat resistant material is notoriously well known in the art. As provided in MPEP § 2144.03, official notice unsupported by documentary evidence should only be taken where the facts asserted to be well known or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known. However, Applicant respectfully asserts that the features of claims 47 and 56 are not capable of instant and unquestionable demonstration as being well known in the art. Accordingly, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth a specific factual statement and explanation to support the finding, or provide documentary evidence supporting the assertion that silicone is a heat resistant material.

For at least these reasons, Applicant's claims 47, 56-57, 66, 68 and 70-81 are patentable over the applied references under 35 U.S.C. § 103(a). Reconsideration and withdrawal of the rejections are respectfully requested.

⁷ Office Action, pages 5 and 8.

New Claims:

Applicant has added claims 82-84 to the pending application. The applied references fail to disclose or suggest Applicant's new claims, and there would have been no rational reason for modification to arrive at the claims.

As one example, the references fail to disclose or suggest an article comprising a woven fabric substrate including a top surface and having an abrasion resistance; and a plurality of non-overlapping guard plates comprising a cured polymer resin on the top surface of the fabric substrate, wherein the plurality of guard plates are separated by gaps on the top surface of the woven fabric substrate and partially penetrate into the top surface of the woven fabric substrate to provide a mechanical bond between the woven fabric substrate and the plurality of guard plates, wherein the plurality of plates guard plates are provided such that the abrasion resistance of the article is at least 5 times greater than the abrasion resistance of the substrate, as recited by claim 82.

No new matter has been added by the new claims.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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